

1  
2  
3  
4  
5  
6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF NEVADA

8 \* \* \*

9 JAMES KENNETH FLOYD,

Case No. 3:17-cv-00459-MMD-VPC

10 Petitioner,

ORDER

11 v.

12 WARDEN BACA, et al.,

13 Respondents.

14 Petitioner James Kenneth Floyd has submitted a *pro se* petition for writ of habeas  
15 corpus pursuant to 28 U.S.C. § 2254 (ECF No. 1-1). His application to proceed *in forma*  
16 *pauperis* shall be granted (ECF No. 1). Floyd challenges his judgment of conviction in  
17 state case no. 16EW00112B. The court has reviewed the petition pursuant to Habeas  
18 Rule 4, and it shall be docketed and served on respondents.<sup>1</sup>

19 A petition for federal habeas corpus should include all claims for relief of which  
20 petitioner is aware. If petitioner fails to include such a claim in his petition, he may be  
21 forever barred from seeking federal habeas relief upon that claim. See 28 U.S.C.  
22 §2254(b) (successive petitions). If petitioner is aware of any claim not included in his  
23 petition, he should notify the court of that as soon as possible, perhaps by means of a  
24 motion to amend his petition to add the claim.

25 It is therefore ordered that petitioner's application to proceed *in forma pauperis*  
26 (ECF No. 1) is granted.

27 <sup>1</sup>The Court notes that Floyd has submitted a second federal habeas petition in  
28 case no. 3:17-cv-00400-MMD-WGC that appears to challenge a different judgment of  
conviction (state case no. C-14-296625-1).

1 It is further ordered that the Clerk file and electronically serve the petition (ECF No.  
2 1-1) on the respondents.

3 It is further ordered that the Clerk add Adam Paul Laxalt, Nevada Attorney General,  
4 as counsel for respondents.

5 It is further ordered that respondents must file a response to the petition, including  
6 potentially by motion to dismiss, within ninety (90) days of service of the petition, with any  
7 requests for relief by petitioner by motion otherwise being subject to the normal briefing  
8 schedule under the local rules. Any response filed must comply with the remaining  
9 provisions below, which are entered pursuant to Habeas Rule 5.

10 It is further ordered that any procedural defenses raised by respondents in this  
11 case must be raised together in a single consolidated motion to dismiss. In other words,  
12 the Court does not wish to address any procedural defenses raised herein either *in*  
13 *seriatum* fashion in multiple successive motions to dismiss or embedded in the answer.  
14 Procedural defenses omitted from such motion to dismiss will be subject to potential  
15 waiver. Respondents must not file a response in this case that consolidates their  
16 procedural defenses, if any, with their response on the merits, except pursuant to 28  
17 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If respondents  
18 do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they shall do so within  
19 the single motion to dismiss not in the answer; and (b) they shall specifically direct their  
20 argument to the standard for dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*,  
21 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural defenses, including  
22 exhaustion, shall be included with the merits in an answer. All procedural defenses,  
23 including exhaustion, instead must be raised by motion to dismiss.

24 It is further ordered that, in any answer filed on the merits, respondents must  
25 specifically cite to and address the applicable state court written decision and state court  
26 record materials, if any, regarding each claim within the response as to that claim.


27 It is further ordered that petitioner will have forty-five (45) days from service of the  
28 answer, motion to dismiss, or other response to file a reply or opposition, with any other

1 requests for relief by respondents by motion otherwise being subject to the normal briefing  
2 schedule under the local rules.

3 It is further ordered that any additional state court record exhibits filed herein by  
4 either petitioner or respondents must be filed with a separate index of exhibits identifying  
5 the exhibits by number. The CM/ECF attachments that are filed further must be identified  
6 by the number of the exhibit in the attachment.

7 It is further ordered that the parties must send courtesy copies of all exhibits in this  
8 case to the Clerk of Court, 400 S. Virginia St., Reno, NV, 89501, directed to the attention  
9 of "Staff Attorney" on the outside of the mailing address label. Additionally, in the future,  
10 all parties shall provide courtesy copies of any additional exhibits submitted to the court  
11 in this case, in the manner described above.

12 DATED THIS 7<sup>th</sup> day of November 2017.

13   
14 \_\_\_\_\_  
15 MIRANDA M. DU  
16 UNITED STATES DISTRICT JUDGE  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28